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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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BRYAN FOLEY,

Appellant,

v.

SARA KNUDSEN,

Respondent.

C083108

(Super. Ct. No. 10FL04891)

Appellant Bryan Foley and respondent Sara Knudsen share custody of their son. Foley has legal and physical custody of their son; Knudsen has supervised visitation. In 2016 Knudsen requested the court renew a domestic violence restraining order set to expire the following month. The trial court granted the request and renewed the order for five years. Foley appeals, arguing by not providing notice regarding the availability of court reporters to litigants who qualify for a fee waiver, the court denied him a meaningful review of the domestic violence restraining order. We shall affirm the judgment.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Foley and Knudsen's son was born in 2009. Foley has legal and physical custody and Knudsen has supervised visitation.

The clerk's transcript reveals dueling narratives of the tumult between the parties leading up to Knudsen's request to renew the domestic violence restraining order.

### **Knudsen's Request to Renew Restraining Order**

Knudsen states, since the issuance of the restraining order, Foley continues to pursue a sexual relationship. In the face of court orders not to do so, Foley continues to send Knudsen nude photos of her, stating she sent them to him. She denies doing so. Foley also posted one of the photos on Facebook. Knudsen videotaped Foley threatening to call her probation officer to have her arrested. Foley and his mother followed Knudsen to various hearings, causing Knudsen to show officers the restraining order against him. Foley also followed Knudsen's daughter with a camera. According to Knudsen, "I have years of history with Mr. Foley where he continues to play games with the court orders, harasses me non-stop and disturbs my peace at all times. I feel like I am always followed by Mr. Foley. [¶] The only thing that somewhat protects me is the [restraining order]."

Knudsen states Foley was previously arrested and pleaded to a violation of the protective order, which required issuance of a criminal protective order. Despite the warnings and arrest, his harassment continues. Foley and his mother attempted to have Knudsen fired from her job. Foley also failed to comply with the batterer's treatment program ordered by the trial court.

### **Foley's Response to Request for Domestic Violence Restraining Order**

Foley states, "My attorney is on limited scope and I did not request his services for this matter." He provides a lengthy explanation for "Reasons I Do Not Agree."

According to Foley, Knudsen's accusations against him are all false and she continues to try and destroy his reputation. Foley denies sending Knudsen nude photos

or calling her names, and states he attended court hearings to “know the truth about what is going on. Our son is a victim and [Knudson] does not disclose the truth about what is going on.” He points out he has sole physical and legal custody of their son “for very good reasons and I know the court finds those reasons very apparent.” Foley denies the trial court repeatedly ordered that he participate in the batterer’s treatment program.

Foley states Knudsen is a serial liar involved in a volatile relationship with her boyfriend. In response, Foley tries to shield their son from the drama Knudsen creates. He attaches documents showing Knudsen has been arrested and jailed three times for assault/domestic violence. Knudsen also has five restraining orders against her. Foley recounts an incident in which he asked for a change in the date of Knudsen’s visitation which culminated in an unnecessary court hearing and a confrontation when Foley’s girlfriend tried to pick up his son. Knudsen has been threatening for years to have the restraining order extended; “This has been her goal.”

According to Foley, the documents reveal Knudsen is a convicted child abuser with a history of domestic violence. The domestic violence restraining order against Foley is based on communications Foley had with Knudsen’s boyfriend over Facebook five years ago. Foley concludes: “There is no reason why [Kundson] should be granted a restraining order against me. I have proven to be no threat to anyone. [Knudson] wants a[ restraining order] against me so she can use it against me as she sees fit. I have never been arrested for anything that would put women or children in harms [*sic*] way. [Kundson] continues to make false accusations about me and it must stop because its [*sic*] hurting my ability to move forward in the work place.”

In support of his opposition, Foley supplied clerk’s exhibits denying Knudsen’s allegations and documenting Knudsen’s various arrests for child endangerment, battery on a spouse, and driving under the influence.

## **The Court's Decision**

The court granted Knudsen's request to renew the restraining order for five years. The order notes both parties appeared in pro. per. Foley filed a timely notice of appeal.<sup>1</sup> Knudsen did not file a respondent's brief.

## **DISCUSSION**

### **I**

Under Family Code section 6345, subdivision (a), a trial court may renew a restraining order “upon the request of a party, either for five years or permanently, without a showing of any future abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.” In determining whether to renew a restraining order, the court employs an objective test and renews the protective order if it finds by a preponderance of the evidence the protected party entertains a reasonable apprehension of future abuse. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1290.) We review the trial court's ruling for an abuse of discretion. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.)

### **II**

On appeal, Foley asserts he lacked meaningful access to a court reporter during the hearing on the domestic violence restraining order. Foley points out in challenging the trial court's decision he bears the burden of showing error by an adequate record. He argues that the court's failure to notify him that a court reporter was available for the hearing on the renewal or that fees for the reporter might be waived deprived him from a “meaningful review of the court's renewing the domestic violence restraining order.”

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<sup>1</sup> Foley is represented by counsel on appeal.

Foley faults the local rules of the Superior Court of Sacramento County for not providing “any notification that a court reporter is available for hearings on Domestic Violence Restraining Orders or that the fees may be waived.”

The local rules provide that in civil and family law cases the parties requesting reporting services shall pay the appropriate fee to the court clerk prior to the beginning of each day of trial. If one party refuses to pay its portion of the fee, the other party may elect to pay the entire fee. If the entire fee is not paid, reporting services shall be deemed waived. (Super. Ct. Sacramento County, Local Rules, rule 1.11.)

The local rules also state official court reporters are normally available for civil trials and can be arranged by contacting the department prior to the hearing date. The court reporter will not report any proceeding unless a request is made and the required fees are paid in advance of the hearing. (Super. Ct. Sacramento County, Local Rules, rule 1.12(A).) “The court does not regularly provide services of official court reporters in Family Law or Probate proceedings. Any party desiring an official record of a proceeding shall arrange for reporting services not later than two court days prior to the date set for hearing by contacting the Court Reporter’s Office . . . .” (Super. Ct. Sacramento County, Local Rules, rule 1.12(C).)

Here, Foley acknowledges that he was granted a fee waiver in the family law case. “However, he was unaware that it applied to the domestic violence case and that it may have applied to court reporter fees when the Local Rule provided that the ‘court does not regularly provide services of official court reporters in Family Law or Probate proceedings.’ ” Foley likens his situation to the plaintiff in *Jameson v. Desta* (2018) 5 Cal.5th 594 (*Jameson*), an opinion filed after Foley’s brief.

Under California’s in forma pauperis doctrine and Government Code section 68086, subdivision (b), a person who because of limited financial resources qualifies for a waiver of court filing fees, is also entitled to a waiver of official court reporter fees at a hearing or trial. In *Jameson*, although the plaintiff was entitled to a waiver of court

reporter fees, he was not provided the opportunity to have a court reporter at his civil trial because the court, in response to significant budget cuts, adopted a policy under which the court did not make court reporters available at most civil trials even if the litigant qualified for a fee waiver. Instead the policy provided a court reporter would be present in civil actions only if a private court reporter was hired and paid for by a party or parties to the litigation. (*Jameson, supra*, 5 Cal.5th at p. 598.)

The plaintiff in *Jameson* could not afford a court reporter and the defendant chose to not to hire a private court reporter. The trial court entered a nonsuit against the plaintiff after plaintiff's opening statement and the plaintiff appealed. The appellate court rejected the plaintiff's appeal without reaching the merits on the ground the plaintiff's legal contentions could not be pursued on appeal absent a reporter's transcript. (*Jameson, supra*, 5 Cal.5th at pp. 598-599.) The Supreme Court granted review to determine the validity of the court's policy of not providing court reporters in most civil trials even for litigants entitled to a waiver of court reporter fees and permitting a court reporter to record court proceedings only if a private court reporter is paid for by one or more parties. (*Id.* at p. 599.)

The Supreme Court held: "By precluding an indigent litigant from obtaining the attendance of an official court reporter (to which the litigant would be entitled without payment of a fee), while at the same time preserving the right of financially able litigants to obtain an officially recognized pro tempore court reporter, the challenged policy creates the type of restriction of meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy render impermissible. Accordingly, we conclude that the court policy in question is invalid as applied to plaintiff and other fee waiver recipients, and that an official court reporter, or other valid means to create an official verbatim record for purposes of appeal, must generally be made available to in forma pauperis litigants upon request." (*Jameson, supra*, 5 Cal.5th at p. 599.)

The case before us differs markedly from the situation in *Jameson*. Here, no policy or rule prevented Foley from obtaining a court reporter without payment of a fee based on his in forma pauperis status. Instead, Foley contends “he was unaware” of the policy of supplying court reporters in domestic violence cases. He acknowledges he received a fee waiver in the family law case, but argues the language in the local rule that the “court does not regularly provide services of official court reporters in Family Law” somehow mislead him. We cannot find Foley’s failure to obtain a court reporter with his fee waiver rises to the level of an official denial of his right to a court reporter. Given the facts before us, *Jameson* does not apply and we find no error in granting the request to renew the restraining order for five years.

#### **DISPOSITION**

The judgment is affirmed. Knudsen shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

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RAYE, P. J.

We concur:

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BLEASE, J.

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RENNER, J.